

UNIVERSITY OF SWAZILAND
FACULTY OF SOCIAL SCIENCE
DEPARTMENT OF LAW

SUPPLEMENTARY EXAMINATION PAPER, JULY 2016

- TITLE OF PAPER** : **MERCANTILE LAW**
- COURSE CODE** : **L 405**
- TIME ALLOWED** : **THREE (3) HOURS**
- INSTRUCTIONS** :
- 1. QUESTION ONE (1) IS COMPULSORY.**
 - 2. ANSWER ANY OTHER THREE (3) QUESTIONS.**
 - 3. ANSWER A TOTAL OF FOUR (4) QUESTIONS.**
 - 4. IN ANSWERING ANY QUESTION NOTE THAT THE QUALITY OF THE CONTENT, CLARITY OF EXPRESSION, AND LEGIBILITY OF HANDWRITING ARE ABSOLUTELY ESSENTIAL.**

THIS PAPER IS NOT TO BE OPENED UNTIL PERMISSION HAS BEEN GRANTED BY THE INVIGILATOR.

QUESTION 1 (Compulsory)

Musa Dlamini purchased goods from ABC Warehouse for E200,000.00 (two hundred thousand emalangeni). He drew up a cheque in favour of the seller (ABC Warehouse) for the purchase price and posted it. The cheque was crossed and marked “not negotiable”. The cheque was stolen and later deposited with Nedbank (Swaziland) Limited, Mbabane Branch, who collected payment on behalf of its customer, ANC Warehousing.

- (i) Who is the true owner of the lost cheque? [5]
- (ii) Can Musa Dlamini sue his bank? If so, on what basis? [5]
- (iii) Can Musa Dlamini sue Nedbank (Swaziland) Limited? If so, on what basis? [10]
- (iv) If Musa Dlamini cannot sue Nedbank (Swaziland) Limited what other remedy, if any, does he have? [5]

[25 MARKS]

QUESTION 2

“In the Law of Negotiable instruments a holder in due course occupies a privileged position”.

- (a) Discuss the requirements for holding in due course. [10]
- (b) Discuss the concepts of “absolute” and “personal” defences in relation to a holder in due course. [10]
- (c) What are the duties of a holder in due course in relation to a dishonoured instrument? [2]
- (d) What are the consequences of a failure to discharge these duties? [3]

[25 MARKS]

QUESTION 3

Discuss the powers of a trustee, with respect to voidable dispositions, setting out the differences, if any, under Section 29 (voidable preferences) and Section 30 (undue preferences) of the Insolvency Act, 1955. [25]

[25 MARKS]

QUESTION 4

Discuss with reference to decided cases the relationship between patrimonial loss or damage and insurable interest in the context of insurance law. [25]

[25 MARKS]

QUESTION 5

Write short notes on the following:

- (a) Double insurance [5]
- (b) *Mutuum* [5]
- (c) Signer of an aval [5]
- (d) Offer of arrangement [5]
- (e) Rehabilitation [5]

[25 MARKS]